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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

MARK SNOOKAL, an individual,

Plaintiff,

vs.

CHEVRON USA, INC., a California Corporation, and DOES 1 through 10, inclusive,

Defendants.

CASE NO.: 2:23-cv-6302-HDV-AJR

PLAINTIFF MARK SNOOKAL'S NOTICE OF *EX PARTE* APPLICATION AND *EX PARTE* APPLICATION FOR LEAVE TO FILE A MOTION TO COMPEL FURTHER DISCOVERY AND TO FILE A MOTION FOR SANCTIONS AGAINST DEFENDANT AND ITS COUNSEL

[OPPOSED BY DEFENDANT]

[*Filed concurrently with the Declaration of Olivia Flechsig and Exhibits 1-23 in Support of Plaintiff's Ex Parte Application for Leave to File a Moton to Compel Further Discovery and to File a Motion for Sanctions against Defendant and Its Counsel; and [Proposed] Order Granting Plaintiff's Ex Parte Application for Leave to File a Motion to Compel Further Discovery and To File a Motion for Sanctions against Defendant and Its Counsel*]

District Judge: Hon. Hernan D. Vera
Magistrate Judge: Hon. A. Joel Richlin
Action Filed: August 3, 2023
Trial Date: August 19, 2025

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Local Rule 7-19, *et seq.* and the Court's Civil Standing Order, Section XIII (Dkt 10), Plaintiff hereby moves the Court on an *ex parte* basis for Leave to File a Motion to Compel Further Discovery and To File a Motion for Sanctions Against Defendant and Its Counsel. This *Ex Parte* Application shall be based upon this Notice, the Memorandum of Points and Authorities in Support Thereof, the Declaration of Olivia Flechsig and Exhibits thereto, and all pleadings, papers, and documents filed in the above-entitled action, along with oral and/or documentary evidence as may be presented at any hearing on said *Ex Parte* Application.

DATED: March 31, 2025

ALLRED, MAROKO & GOLDBERG

By: _____
DOLORES Y. LEAL
OLIVIA FLECHSIG
Attorneys for Plaintiff,
MARK SNOOKAL

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Chevron U.S.A., Inc. (hereinafter "Defendant" or "Chevron") has repeatedly engaged in bad-faith discovery abuse by, *inter alia*, withholding key documents and important information helpful to Plaintiff's position, making empty promises to provide supplemental discovery responses and to schedule the deposition of its expert witness, Dr. Victor Adeyeye, and ignoring several requests over the course of two months to provide their availability for an informal discovery conference (or "IDC"). Previously, in response to Defendant's "inexcusable delay in producing probative documents" which "negatively affected Plaintiff's ability to take discovery on issues central to Chevron's pending motion for summary judgement,"[1] the Court granted Plaintiff's *Ex Parte* Application, reopening discovery for a 90-day period and set new close of fact discovery deadline of February 25, 2025. (Dkt. 38.) This further discovery abuse and unreasonable delay has necessitated this second *Ex Parte* Application, this time seeking leave for Plaintiff to file a motion to compel discovery and a motion seeking sanctions against Defendant and its counsel.

There is no reasonable explanation for Defendant's extreme and repeated delay. To the contrary, the evidence indicates that Defendant has been cherry-picking which responsive documents to produce, and which to withhold. The late production of additional documents, yet again, has exposed 1) the pressing need to obtain supplemental discovery responses from Defendant and 2) the need to sanction Defendant and its counsel for their repeated failure to cooperate in the discovery process.

II. FACTUAL OVERVIEW

Chevron is the former employer of Plaintiff Mark Snookal (hereinafter "Plaintiff" or "Mr. Snookal"), and the instant lawsuit arises out of Chevron's disability discrimination against Mr. Snookal. After Chevron offered Mr. Snookal a job position in Escravos, Nigeria, Chevron rescinded the offer after Mr. Snookal disclosed his disability during a medical screening.

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[1] Docket 37, the Court's Order Granting Plaintiff's Ex Parte Application to Take Further Discovery.

Chevron claimed this was because Mr. Snookal was a "direct threat" to himself and therefore "not fit for duty," despite the recommendations of multiple doctors who opined about the negligible risks associated with Mr. Snookal's asymptomatic disability. Chevron meanwhile gave away Mr. Snookal's old position in El Segundo, California, leaving him in limbo, and ultimately wrongfully constructively terminated him. Mr. Snookal has therefore brought claims against Chevron for 1) disability discrimination in violation of the California Fair Employment and Housing Act ("FEHA"), Cal. Gov. Code § 12940, *et seq.*; (2) failure to accommodate a disability in violation of the FEHA, *Id.*; and (3) wrongful constructive discharge in violation of public policy.[2]

III. PROCEDURAL HISTORY

Plaintiff filed the complaint in the instant action on August 3, 2023 (Dkt 1), and the Court initially ordered Close of Fact Discovery on August 13, 2024 (Dkt 19). Despite the deadlines, Defendant unreasonably delayed in producing documents in their own custody and control, among other abusive discovery tactics. (See generally, the Declaration of Olivia Flechsig ("Flechsig Decl.") filed concurrently herewith.) In particular, on Friday November 8, 2024, almost three months after the close of fact discovery, Defendant produced one hundred and thirty-two pages of new documents as CUSA000816-948. (Flechsig Decl. at ¶ 14.) These documents revealed for the first time the involvement of a percipient witness, Dr. Stephen Frangos, in the decision to deem Mr. Snookal "unfit for duty" in Escravos, a factual and legal issue at the core of Mr. Snookal's disability discrimination claim and claim for punitive damages. (Id. at ¶¶ 14-15.) This despite multiple junctures at which Chevron was legally and ethically bound to make this disclosure and to certify the truthfulness of their disclosures. (Flechsig Decl. at ¶ 3-17.) Indeed, Defendant concealed Dr. Frangos' involvement as a percipient witness, key decisionmaker, and managing agent throughout the *entire* course of discovery. (Id). Defendant's delayed production also contained documents which Plaintiff had

[2] On September 27, 2024, the Court entered the Parties' joint stipulation to dismiss Mr. Snookal's third cause of action for age discrimination. (Dkt 27).

been requesting for months, well in advance of the August 13, 2024 Close of Fact Discovery Deadline. (Flechsig Decl. at ¶¶ 4-5.) Nonetheless, Chevron conveniently withheld these documents until *after* filing the Joint Brief Regarding Chevron's Motion for Summary Judgment. (Flechsig Decl. at ¶ 14-18.) Perhaps worse still, these documents bore date stamps which suggest that Defendant's counsel had had these responsive documents for months prior but withheld them without any basis for doing so.[3] (Flechsig Decl. at ¶ 8, Exhibit 6.) Defendant's counsel and its witness, Dr. Eshiofe Asekomeh also indicated that Defendant's counsel had already received these non-privileged and responsive documents months prior. (Flechsig Decl. at ¶ 10, Exhibit 8.)

Further still, while Plaintiff took depositions of Defendant's witnesses during the initial discovery period, Defendant twice delayed in producing relevant documents until hours, or even *minutes* before the witnesses' respective depositions, even though Plaintiff had requested the documents month prior. (Flechsig Decl. at ¶¶ 8, 12-13.)

Given Chevron's concealment of key information and gamesmanship in withholding documents, on November 20, 2024, Plaintiff filed an *Ex Parte* Application for Leave to Supplement Opposition to Defendant's Motion for Summary Judgment, Leave for Plaintiff to Take Further Discovery, and Leave to File Motion Seeking Discovery Sanctions against Defendant and Its Counsel. (Dkt 35.) Despite Chevron's opposition, the Court agreed with Mr. Snookal that Chevron "failed to identify a key witness (Dr. Frangos) in their interrogatory responses and delayed in producing relevant documents until the eve of various crucial depositions." (Dkt. 37). The Court also noted that "Defendants' (sic) dilatory tactics negatively affected Plaintiff's ability to take discovery on issues central to Chevron's pending motion for summary judgment," and that Defendant's delay was "not attributable to Plaintiff's lack of diligence." (Dkt 37). Given Chevron's "inexcusable delay in producing probative documents" the Court reopened discovery for a ninety-day period and issued a modified scheduling order.

[3] It also bears noting that Chevron's Opposition to Plaintiff's previous *Ex Parte* Application was devoid of any explanation for these date/time stamps and contained no denial that they had long had those responsive documents in their possession.

(Id.) The Court's Modified Order Setting Pretrial & Trial Schedule (Dkt 38) set the new Fact Discovery Cut-Off on February 25, 2025, and the Last Date to Hear Motions on May 13, 2025.

However, during the reopened discovery period, Defendant's counsel engaged in additional dilatory tactics. More specifically, Defendant's counsel:

1) Agreed to supplement several of its responses to Plaintiff's Requests for Production and Plaintiff's Interrogatories, and to provide a privilege log for withheld documents, then never did so (Flechsig Decl. at ¶¶ 19-28);
2) Agreed to schedule the deposition of one of their designated expert witnesses, Dr. Adeyeye, for the end of March 2025, then never did so (Id. at ¶¶ 35-38);
3) Outright refused and/or ignored *five* written requests to provide their availability for an Informal Discovery Conference over the course of two months, making it impossible for Plaintiff to schedule same[4] (Id. at ¶¶ 33-34); and
4) Most recently, on the night of March 11, 2025, Defendant served over 613 pages of *new documents* which Plaintiff had requested in his first set of Requests for Production over ten months prior (Id. ¶¶ at 29-32.) This was not only after the close of fact discovery deadline, but also only nine days before Plaintiff's deadline to oppose Defendant's renewed Motion for Summary Judgment.[5] (Id.)

In accordance with Local Rule 7-19.1 and the Court's Civil Standing Order Section XIII, on March 25, 2025, Plaintiff's counsel provided the requisite notice to counsel for Defendant by advising them, both by voicemail message, during a real-time phone call with Chevron's counsel, and via email of the anticipated date and substance of this *Ex Parte* Application, and of

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[4] On March 11, 2025, almost two months after the first of five requests to provide their availability for an IDC, Defendant's counsel finally provided a date range of availability for March 19-21, 2025. These dates were clearly untenable for Plaintiff's counsel since Plaintiff's deadline to oppose Defendant's MSJ was March 20, 2025, and because this "offer" of March 19-21 was made in conjunction with Defendant's late production of over 600 new documents nine days before the opposition deadline. (Flechsig Decl. at ¶¶ 32-34)

[5] Defendant served Plaintiff with its renewed Motion for Summary Judgment on March 6, 2025. The integrated Joint Brief Re: Defendant's Motion for Summary Judgment Or, in the Alternative, Partial Summary Judgment, is set for hearing on May 8, 2025. (Dkts 43-46).

their deadline to file an opposition to same. (Flechsig Decl. at ¶¶ 39-40). Chevron's counsel advised that they will be filing an opposition to same. (Id. at ¶ 41.)

IV. ARGUMENT

A. Plaintiff Was Without Fault in Creating the Time Constraints Necessitating *Ex Parte* Relief and Would Be Irreparably Prejudiced Without Same

The standard for *ex parte* relief is twofold. First, "the evidence must show that the moving party's cause will be irreparably prejudiced if the underlying motion is heard according to regular noticed motion procedures. Second, it must be established that the moving party is without fault in creating the crisis ...." *Mission Power Eng'g Co. v. Cont'l Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995).

Here, a regularly-noticed motion would be impracticable because the Court's next available hearing dates are not until May of 2025, and Parties' first round of pretrial filings, including a joint exhibit list, are due on July 1, 2025. (Dkt 38.) By the time a regularly-noticed on these issues could be heard in May, and then a subsequent discovery motion could be made thereafter, it would be too late for Plaintiff to obtain the necessary discovery at issue. Absent relief on an *ex parte* basis, Plaintiff will be irreparably prejudiced 1) by being denied the opportunity to complete discovery and 2) by allowing Defendant to continue to needlessly delay to their own benefit.

Moreover, Plaintiff is "without fault in creating the crisis" which necessitates this *ex parte* application. Plaintiff timely sought discovery and made extensive follow-up attempts to meet and confer with Defendant in good faith. (Flechsig Decl. at ¶¶ 17-38.) However, Defendant's delay in responding, and its unfulfilled promises to make the requested information available prevented Plaintiff from making these motions until after the close of fact discovery. (Id.)

More specifically, with respect to Dr. Adeyeye's deposition, Plaintiff's counsel inquired with Defendant in writing about scheduling over *nine times* over a period of five months. (Id. at ¶¶ 36-38.) Defendant's counsel ignored many of these scheduling attempts, but ultimately, on March 5, 2025, Defendant's counsel represented that the deposition could be scheduled for the

second half of March 2025. (Id. at ¶ 38, Exhibit 17.) They then failed to do so. (Id.)

With respect to Plaintiff's Requests for Production and Plaintiff's Interrogatories, after extensive meet and confer efforts, Defendant's counsel agreed to supplement many of them. (Id. at ¶¶ 19-29.) This seemed to obviate the need for Plaintiff to make a motion to compel further discovery concerning these issues, until they failed to uphold their promise to do so. Similarly, Plaintiff was unaware of the sheer magnitude of missing key documents until Defendant finally produced them on March 11, 2025. (Id. at ¶¶ 30-32.) Containing over six hundred pages of new documents, this delayed production is more than 40% of all documents Defendant has produced to date. (Id.) Most of these documents were responsive to requests Plaintiff served over ten months ago. (Id. at ¶¶ 30-32.) Further, many of these documents are email threads between the same senders/recipients and in the same date range, for documents which Defendant produced long ago, so one can infer that Defendant has long had these documents in their possession. (Id.) This is new evidence which supports the need to move to sanction Defendant and its counsel.

B. Good Cause Exists to Allow Plaintiff Leave to File A Motion to Compel Further Discovery

FRCP Rule 16(4)(b) provides that a scheduling order "may be modified only for good cause and with the judge's consent." Fed.R.Civ.P. 16(b)(4). In evaluating whether the "good cause" standard is satisfied, the Court considers (1) whether trial is imminent, (2) whether the request is opposed, (3) whether the non-moving party would be prejudiced, (4) whether the moving party was diligent in obtaining discovery within the guidelines established by the court, (5) the foreseeability of the need for additional discovery in light of the time allowed for discovery by the district court, and (6) the likelihood that the discovery will lead to relevant evidence. *City of Pomona v. SQM N. Am. Corp.*, 866 F.3d 1060, 1066 (9th Cir. 2017).

These factors support allowing Plaintiff to file a motion to compel further discovery and to file a motion for sanctions against Defendant and its counsel. Though trial is set for August 19, 2025 and Defendants oppose this *Ex Parte* Application, Defendant would not be prejudiced because this application is narrowly-tailored and need not disturb the other existing deadlines. The discovery in question is also highly likely to lead to relevant evidence, since Dr. Adeyeye is

one of Defendant's designated expert witnesses, and the categories of discovery sought pertain to central issues of the case, including communications about the decision to rescind the Escravos, Nigeria job from Mr. Snookal, and why. Here, providing an *ex parte* exception to the court's scheduling order is also appropriate because it is in fact "based upon new and pertinent information" to Plaintiff, which Defendant has unreasonably withheld—despite their representations — until after close of fact discovery.

C. Good Cause Exists to Allow Plaintiff to Seek Sanctions Against Defendant and its Counsel for Repeated Discovery Abuse and Bad-Faith Delay

It is canonical that "[d]iscovery between parties should be cooperative and largely unsupervised by the district court. *Infanzon v. Allstate Ins. Co.*, 335 F.R.D. 305, 310–11 (C.D. Cal. 2020), *aff'd*, No. 22-56070, 2024 WL 3631140 (9th Cir. Aug. 2, 2024) citing *Sali v. Corona Reg'l Med. Ctr.*, 884 F.3d 1218, 1219-20 (9th Cir. 2018). The *Infanzon* court further noted that, "[w]hen that cooperation breaks down, the district court has broad discretion to regulate discovery conduct and, if needed, impose a wide array of sanctions. *See* Fed. R. Civ. P. 37; L.R. 37-4; *Campidoglio LLC v. Wells Fargo & Co.*, 870 F.3d 963, 975 (9th Cir. 2017). When justified, discovery sanctions 'must be applied diligently both to penalize those whose conduct may be deemed to warrant such a sanction, [and] to deter those who might be tempted to such conduct in the absence of such a deterrent.'" *Infanzon v. Allstate Ins. Co.*, 335 F.R.D. 305, 310–11 (C.D. Cal. 2020), *aff'd*, No. 22-56070, 2024 WL 3631140 (9th Cir. Aug. 2, 2024) quoting *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 763-64 (S. Ct. 1980). "Under its inherent powers, a court may impose sanctions where a party has willfully disobeyed a court order, or where the party has "acted in bad faith, vexatiously, or for oppressive reasons." *Lofton v. Verizon Wireless (VAW) LLC*, 308 F.R.D. 276, 285 (N.D. Cal. 2015) (citation omitted) citing *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S.Ct. 1749, 1758 (S. Ct. 2014).

Plaintiff's counsel has now expended numerous hours attempting to meet and confer with Defense counsel, following up on ignored correspondence regarding discovery, and drafting two separate *ex parte* applications because of Chevron's discovery abuse. If this *Ex Parte* Application is granted, there will be additional expenditure of Plaintiff's counsel's time

and resources to obtain the requested relief. This would not have been necessary absent Defendant's vexatious and oppressive actions, and sanctions are appropriate to both to compensate Plaintiff's counsel and to deter Defendant and its counsel from further abuses.

In an attempt to deter Plaintiff from exposing their discovery abuse, Defendant's counsel has once again offered to "stipulate" to allow further discovery. (Flechsig Decl. at ¶¶ 39-40.) This is not a tenable solution for Plaintiff. For one thing, Defendant's discovery misconduct indicates that court intervention is required. This is especially true since Defendant has already unreasonably delayed in cooperating and has broken their own stipulated agreements to produce supplemental responses and to provide availability for Dr. Adeyeye's deposition. (See generally, Id.) And, since fact discovery has closed for the second time, absent *ex parte* relief, Plaintiff would be without any remedy for continued discovery abuses (i.e. he could not file a motion to compel because fact discovery has closed). To avoid irreparable prejudice to Plaintiff, Plaintiff should be granted leave to file these specific motions despite the passage of the close of fact discovery deadline.

D. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant Plaintiff's *Ex Parte* Application in full.

DATED: March 31, 2025

ALLRED, MAROKO & GOLDBERG

By: _____

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